

## DETAILED ACTION

1. The delays concerning the mailing of this detailed action is due to office error.

The examiner wishes to express regret for any inconvenience this delay may have caused the applicant.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 9-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Ichimura et al. (US Patent 5,277,269).

Ichimura et al. teaches a prime move control device of a construction machine that includes a hydraulic pump (1) driven by an engine (21); an actuator (motor 4) driven with pressurized oil from the pump (1); a control valve (2) that controls a flow of pressurized oil from the pump (1) to the actuator (motor 4) in response to an operation of a first operating member/pedal (6a), including: a first set device (33h) that sets a first set rotation speed of the engine (21) according to the operation of the first operating member (foot operated pedal 6a); a second set device (33g) that sets a second set rotation speed of the engine (21) according to an operation of a second operating member (fuel lever 23); a selection member (33c) that selects one of a first/moving mode and a second/working mode; a rotation speed control device that controls an engine rotation speed to match with the first set rotation speed when the selection

member (33c) selects the first mode, and that controls the engine (21) rotation speed to match with the second set rotation speed when the selection member (33c) selects the second/working mode. As shown in Figure 8, the selection member (33c) is installed in the vicinity of the second operating member (23). The control device includes a determination device that determines a traveling state and a work state, such that during the traveling state, the first set device sets the first set rotation speed to a larger value compared to a value to be set when the work state is being determined because engine speed is controlled in the work state. Re claim 9, the speed is set to the operation of the second operating member (23) when in the second (working) mode, regardless of the operation of the first operating member (6a). Re claims 15 and 21, the application of brake detection and neutral detection is taught in col. 3, lines 25-43.

***Response to Arguments***

3. Applicant's arguments, see pages 6-8, filed April 2, 2009, with respect to the rejection(s) of claim(s) 9-21 under 35 U.S.C. 102(b) over U.S. Patent No. 4,651,846 to Headrick have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Ichimura et al. (US Patent 5,277,269).

***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Krause shows a fluid pressure actuated brake light switch.

Holtkamp et al. shows a hydrostatic propulsion system.

Ishimaru et al. shows a speed control system for wheeled hydraulic traveling vehicle.

Williamson shows a control system for lift trucks.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIDGET AVERY whose telephone number is (571)272-6691. The examiner can normally be reached on Monday-Thursday from 8:00AM to 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris, can be reached on 571-272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/S. Joseph Morano/  
Supervisory Patent Examiner, Art Unit 3617  
/Bridget Avery/

Examiner, Art Unit 3618